

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>JAMES ROBERT TICE,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:24-CV-46</b>
	)	
<b>HARRY WILSON, et al,</b>	)	
	)	
<b>Respondents.</b>	)	

**MEMORANDUM ORDER**

This petition for writ of habeas corpus was received by the Clerk of Court on February 20, 2024.<sup>1</sup> The matter was assigned and referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The undersigned is familiar with Mr. Tice, having been assigned to his prior petition for writ of habeas corpus, filed in 2003, challenging his convictions of two counts of rape, criminal attempted involuntary deviate sexual intercourse, indecent assault, and corruption of a minor in the Erie County Court of Common Pleas. As a then-magistrate judge, I appointed counsel, conducted two evidentiary hearings, and ultimately recommended that the petition be granted in part and denied in part. District Judge Sean J. McLaughlin adopted that Report and Recommendation. *See Tice v. Wilson*, 1:03-cv-09 (W.D. Pa.). Mr. Tice appealed that decision to the United States Court of Appeals which affirmed the order of the District Court.

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<sup>1</sup> Petitioner originally styled this action as a coram nobis petition. *See* ECF No. 1. He later clarified that he intended to proceed under § 2254 and filed his amended petition. *See* ECF No. 16, 20.

Mr. Tice's present petition challenges the same judgment of sentence that he previously challenged in his earlier case at 1:03-cv-09. On November 20, 2024, Chief Magistrate Judge Lanzillo issued a Report and Recommendation recommending that the petition be dismissed because it is a second or successive petition and Mr. Tice did not receive an order from the Court of Appeals for the Third Circuit authorizing this Court to consider it. ECF No. 25.

Plaintiff filed lengthy Objections to the Report and Recommendation. ECF No. 30. "If a party objects timely to a magistrate judge's report and recommendation, the district court must 'make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.'" *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) *quoting* 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2).

Petitioner's objections focus on the merits of his case rather than the successive nature of the instant petition. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(b) divests district courts of jurisdiction over habeas petitions that are second or successive filings until the appropriate Court of Appeals authorizes the filing.

After *de novo* review of the petition and other documents in the case, together with the Report and Recommendation and the Objections thereto, the following order is entered:


AND NOW, this 7th day of February, 2025;

IT IS ORDERED that, because this Court lacks jurisdiction over this successive petition, the petition is dismissed. Mr. Tice did not receive an order from the United States Court of

Appeals for the Third Circuit authorizing this Court to consider the successive petition as required by 28 U.S.C. § 2244(b). Furthermore, a Certificate of Appealability should be denied.

AND, IT IS FURTHER ORDERED that the Report and Recommendation of Chief Magistrate Judge Lanzillo, issued on November 20, 2024 [ECF No. 25] is adopted as the opinion of the court.

The Clerk is directed to close this case.

  
~~/s/ Susan Paradise Baxter~~  
SUSAN PARADISE BAXTER  
United States District Judge